

No. 17,352

IN THE

**United States Court of Appeals  
For the Ninth Circuit**

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FARMERS UNION CORPORATION,	}
<i>Petitioner,</i>	
VS.	
COMMISSIONER OF INTERNAL REVENUE,	
<i>Respondent.</i>	

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On Petition for Review of the Decision of the  
Tax Court of the United States

**PETITION FOR A REHEARING**

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FILED

APR 5 1952

FRANK H. SCHWAB, CLERK



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## THE HISTORY OF THE

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*To the Honorable Judges of the United States Court  
of Appeals for the Ninth Circuit:*

Petitioner hereby presents its petition for a rehearing and in support thereof respectfully shows:

1. On October 25, 1960, the Tax Court of the United States entered a decision finding income tax deficiencies due by petitioner for the calendar years 1951, 1952 and 1953, holding, in part, that petitioner's exchange of corporation assets for shares of its outstanding capital stock was a partial liquidation and not a sale, as reported by petitioner.

2. On January 19, 1961, petitioner filed a petition for review by this Court.

3. On September 18, 1961, petitioner's opening brief was filed in this Court.

4. Respondent's answering brief was dated October, 1961 and petitioner's reply brief was dated November 6, 1961, both being timely filed with this Court.

5. Petitioner's brief contained arguments, supported by statutes, regulations and judicial precedent, as follows:

A. An exchange of corporation property for shares of its stock is a taxable transaction, in which gain or loss is recognized for income tax purposes, unless the primary purpose of such transaction is to effect a capital readjustment, within the scope of Section 115(i), Internal Revenue Code (1939). Cases cited, in which corporations transferred their property to stockholders in exchange for corporation stock, all emphasized the distinction between taxable transactions with stockholders, involving stock, and calling in, redeeming or purchasing stock for the purpose of revising the capital structure of the corporation. These cases are:

*Commissioner v. Boca Ciega Development Co.*,  
66 F. (2d) 1004;

*Dorsey v. Commissioner*, 76 F. (2d) 339;

*Hammond Iron Co. v. Commissioner*, 122 F.  
(2d) 4;

*Trinity Corporation v. Commissioner*, 127 F.  
(2d) 604;



*Spear & Co. v. Heiner*, 54 F. (2d) 134;  
*Johnson McReynolds Chevrolet Co.*, 27 T.C.  
300;  
*Country Club Estates, Inc.*, 22 T.C. 1283, 1287,  
1292-3.

B. Reduction of stated capital, as the result of petitioner's acquisition of its own stock in the subject transaction, is an accounting technique and does not affect the capital structure of the corporation,

Sections 1700, 1706, 1710, 1904, *California Corporations Code*.

C. Contraction or termination of business activity of a corporation, resulting from the exchange of assets for stock, is not evidence of liquidation, under the 1939 Internal Revenue Code and Regulations.

6. On December 6, 1961, this case was orally argued before a division of this Court and taken under submission. By written opinion, dated March 8, 1962, this Court affirmed the decision of the Tax Court of the United States. This opinion gave no apparent recognition to the distinction between receiving stock in a commercial transaction and deliberately acquiring it for capital purposes. The opinion also omitted reference to any statutory or judicial authority for the conclusion that reduction of stated capital and contraction of corporate business activity, as consequences of the subject transaction, are indicative or evidence of partial liquidation.

**CONCLUSION**

It is a general rule that there is ground for rehearing if the Court has overlooked material points or decisive authorities duly submitted by counsel.

5 *C.J.S.* 552, "Appeal and Error", Section 1423;

3 *Am. Jur.* 346, "Appeal and Error", Section 398.

A rehearing should be granted upon the above stated grounds to permit more extensive consideration of the law and facts of this case.

Dated, San Mateo, California,  
April 5, 1962.

Respectfully submitted,

RALPH A. YEO,

*Attorney for Petitioner.*

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**CERTIFICATE OF COUNSEL**

The undersigned, Ralph A. Yeo, is counsel for petitioner. In my judgment, petitioner's petition for rehearing by this Court is well founded. It is not interposed for delay.

Dated, San Mateo, California,  
April 5, 1962.

RALPH A. YEO.